

**REMARKS**

Claims 1-8 remain pending in this application.

The disclosure is objected to for lack of a subheading for "Brief Description of the Drawing [sic]". Applicants respectfully disagree, and note that such a subheading was inserted into the specification at page 4, line 3, by the Preliminary Amendment filed on February 8, 2006 with the original application papers. Accordingly, the objection to the specification should be withdrawn.

Claims 1-3 and 5 are rejected under 35 USC 102(b) on Franke (DE 8812806U1). This rejection is respectfully traversed.

Claim 1 recites an endoprosthesis for replacing an ankle joint. The endoprosthesis has a lower component, an upper component and an intermediate part. The lower component is configured to be connected to an ankle bone and forms a top slide surface. The upper component forms a bottom slide surface and has an upper connection surface for connection to a resection surface of a shin bone. The intermediate part has two slide surfaces interacting with the top and bottom slide surfaces of the upper and lower components. Either the upper component is wedge-shaped in a frontal or sagittal section between its bottom slide surface and its top connection surface, or the intermediate part is wedge-shaped in a sagittal section between its slide surfaces.

The Examiner relies on item 6 of FIGS. 2 and 3 of Franke for teaching an intermediate part having a wedge-shape in a sagittal section between its slide surfaces as claimed. Applicants respectfully disagree. Item 6 does have, at its bottom surface, several slanted portions (e.g., a rear and front surface, and concave curvature 26 therebetween), and these slanted portions are angled to the top surface. However, item 6 is not wedge-shaped in a sagittal section between its slide surfaces as claimed. Rather, as shown in FIGS. 2, 5 and 8, item 6 is symmetrical in a sagittal section between its slide surfaces, having the same height at the front and at the rear. An example of a wedge-shaped intermediate part is illustrated in FIG. 6 of the present application, in which the height of the intermediate part is different at the front and at the rear. Franke neither discloses an

intermediate part, nor an upper component, that is wedge-shaped in a sagittal section between its slide surfaces as claimed.

Claims 4 and 7 are rejected under 35 USC 103(a) on Franke in view of Groth (US 4,069,518). This rejection is respectfully traversed, since the deficiencies of Franke are not compensated for by the additional reference of Groth. Foremost, Groth is a two-component prosthesis, having only an upper and a lower part and no intermediate part. Further, Groth does not disclose a component that is wedge-shaped between its top and bottom surfaces. Tibial member 13 has perfectly parallel top and bottom surfaces as shown in Fig. 5. Groth shows plenty of angled surfaces (e.g., angles B and C in Fig. 5 and angle A in Fig. 3), but all of these angles relate to lateral surfaces. Hence, neither Groth nor Franke, either alone or together, teach or suggest the claimed subject matter.

Claim 6 is rejected under 35 USC 103(a) on Franke in view of Elloy (US 4,904,269). This rejection is respectfully traversed.

Claim 6 recites a system of endoprotheses for replacing the ankle joint. The system comprises a plurality of sets of endoprotheses, with each set including a lower component, an upper component and an intermediate part. The lower component is configured to be connected to an ankle bone and comprises a top slide surface. The upper component comprises a bottom slide surface and a connection surface configured for connection to a resection surface of a shin bone. The intermediate part comprises two slide surfaces configured for interacting with the top and bottom slide surfaces of the upper and lower components.

Further, the system comprises sets of normal upper components, normal intermediate parts, and either corrective components or corrective intermediate parts. The normal upper components and normal intermediate parts have top and bottom faces that are substantially parallel. The corrective components are configured for exchange for the normal upper components, and are wedge-shaped in their sagittal or frontal planes between their top and bottom faces. The corrective

intermediate parts are configured for exchange for the normal intermediate parts, and, between their top faces and the overall course of the bottom faces, are wedge-shaped in the sagittal plane as compared to the normal intermediate parts.

The Examiner relies on Franke for teaching the subject matter of claim 6 but for wedge-shaped corrective components, for which the Examiner refers to Elloy. The Examiner concludes that it would have been obvious to combine Franke with Elloy to arrive at the claimed invention. Applicants respectfully disagree.

Foremost, Elloy is directed to a completely different field of prostheses, namely hip prostheses. Such prostheses do not have any kind of slide surfaces; they are only configured for a rotational movement (e.g., via ball head 2 of Elloy). Hence, there would have been no reason for a person skilled in the art to look at hip prostheses to arrive at the claimed invention, due to this completely different kind of articulation.

Further, because Elloy does not disclose any component having a slide surface, Elloy is not combinable with Franke.

Additionally, the claimed prosthesis system comprises sets of endoprostheses that each include three parts: a lower component, an upper component and an intermediate part. In case of need, exchange components are provided for the upper components or the intermediate parts. Being exchange components, the total number of components to be implanted remains at three. In other words, the part count is constant owing to the exchange concept. Elloy, on the other hand, discloses the use of additional components, namely wedges 20 and 21 in case of need. Hence, in Elloy the part count is increased by one, making the prosthesis more complex and by creating an additional internal surface, between the stem and the wedge, which is more prone to wear – thus increasing the risk of failure. These disadvantages are overcome by the exchange concept of the present invention, for which Elloy provides no teaching or suggestion.

In view of the above, early action allowing claims 1-8 is solicited.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **246472009200**.

Dated: April 22, 2008

Respectfully submitted,

By Bradley J. Meier  
Bradley J. Meier

Registration No.: 44,236  
MORRISON & FOERSTER LLP  
1650 Tysons Blvd, Suite 400  
McLean, Virginia 22102  
(703) 760-7735